

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 14-11B

Z.C. Case No. 14-11B

(Text Amendment – 11 DCMR)

**(Subtitle B, Definitions; Subtitle D, Zones R-2, R-13, R-17, and R-20; Subtitle E, RF Zones;
and Subtitle U, Use Permissions RF Zones)**

March 27, 2017

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.), hereby gives notice of its adoption of amendments to Subtitles B (Definitions, Rules of Measurement, and Use Categories); D (Residential House (R) Zones); E (Residential Flat (RF) Zones); and U (Use Permissions) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

The amendments address concerns about excessively disproportionate rear extensions adjoining attached and semi-detached buildings in the R-2, R-3, R-13, R-17, R-20, and RF zones by adding language limiting a matter-of-right rear extension to such buildings, whether as an addition to an existing building or as new construction, from extending further than ten feet (10 ft.) beyond the farthest rear wall of an adjoining principal residential building on an adjoining property (10-foot limitation). The amendments allow a rear extension to extend further than ten feet (10 ft.) if approved as a special exception. The proposed limitation does not apply to detached buildings because a detached building, including any rear addition, would be subject to side yard requirements that provide separation from adjacent buildings.

Also adopted are amendments to the adopted text from Z.C. Case No. 14-11 regarding conversions to apartment houses in the RF zones that make clarifications requested by the Zoning Administrator. These amendments are identified and explained in Part II of the Office of Planning's (OP) setdown report for this case, which is Exhibit No. 1 in the record. Finally, the amendments make clarifying changes to the rules prohibiting in an RF zone the removal or significant alteration of original rooftop architectural elements or the construction of an addition that would interfere within an existing solar energy system

A Notice of Proposed Rulemaking (Notice) was published in the *D.C. Register* on February 10, 2017, 64 DCR 1470.

Prior to the publication of the Notice, Advisory Neighborhood Commission (“ANC”) 6B filed a report supporting the clarifying language proposed. The ANC expressed some concern that the vent/chimney provisions might continue to be ambiguous, particularly with respect to the meaning of what constitutes a “working” vent/chimney. The ANC further indicated and that it would appreciate any clarification that OP and the Commission could provide.

Timely public comments to the Notice were received from Cindy Jimenez and Cris Turner (10-foot limitation was too restrictive), Sandy Kheradi, Cameron Alexander Holdings, LLC (opposing inclusion of porch roofs as architectural elements that require special exception approval to be modified), and Tarique Jawed, Stony Creek Homes (already filed building permit applications should be vested against the application of the 10-foot limitation).

At its regularly scheduled meeting held March 13, 2017, the Commission voted to defer final action so as to permit OP to respond to the ANC report, the public comments, and certain questions posed by the Commission at the conclusion of the hearing.

By report dated March 22, 2017, OP indicated that it had shared ANC 6B’s concerns with the Office of the Zoning Administrator, which indicated that it remained comfortable with the amendment’s proposed wording. OP recommended no changes to this portion of the text. As to whether the 10-foot limitation was too restrictive, OP noted that special exception relief would be available. OP also indicated its opposition to removing modifications of porch roofs from special exception review. Finally, in response to vesting concerns expressed by Stony Creek Homes, OP indicated that it would not object to vesting building permit applications received prior to July 1, 2017 against the application of the 10-foot limitations and represented that the Office of the Zoning Administrator also had no objection to such vesting.

At its regularly scheduled meeting held March 27, 2017, the Commission took final action to adopt the proposed text without change. Although the Commission agreed with the Office of Planning’s recommendation to not change the substantive text of the rules, it concluded that exempting current and some future building permit applications from the 10-foot limitation would add uncertainty to the zoning process.

These rules become effective immediately upon publication of this notice in the *D.C. Register*.

Title 11 DCMR, ZONING REGULATIONS OF 2016, is amended as follows:

Title 11-B DCMR, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Chapter 1, DEFINITIONS, is amended as follows:

The definition of “Boarding House” in § 100.2 of § 100, DEFINITIONS, is amended to read as follows:

Boarding House: A building or part thereof where, for compensation, lodging and meals are provided to three (3) or more guests on a monthly or longer basis; a boarding house shall be considered a residential structure.

Title 11-D DCMR, RESIDENTIAL HOUSE (R) ZONES, is amended as follows:

Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, is amended as follows:

New §§ 306.3 and 306.4 are added to § 306, REAR YARD, to read as follows:

- 306.3 Notwithstanding Subtitle D §§ 306.1 and 306.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property.
- 306.4 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES - R-12 AND R-13, is amended as follows:

New §§ 706.3 and 706.4 are added to § 706, REAR YARD, to read as follows:

- 706.3 Notwithstanding Subtitle D §§ 706.1 and 706.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property.
- 706.4 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONE - R-17, is amended as follows:

New §§ 1006.2 and 1006.3 are added to § 1006, REAR YARD, to read as follows:

- 1006.2 Notwithstanding Subtitle D § 1006.1, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property.

1006.3 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, is amended as follows:

New §§ 1206.3 and 1206.4 are added to § 1206, REAR YARD, to read as follows:

1206.3 Notwithstanding Subtitle D § 1206.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property.

1206.4 In the R-20 zone, a rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on an adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Title 11-E DCMR, RESIDENTIAL FLAT (RF) ZONES, is amended as follows:

Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), is amended as follows:

New §§ 205.4 and 205.5 are added to § 205, REAR YARD, to read as follows:

205.4 Notwithstanding §§ 205.1 through 205.3, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property.

205.5 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on an adjoining property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

Section 206, ROOF TOP OR UPPER FLOOR ADDITIONS, is amended to read as follows:

206 ROOF TOP OR UPPER FLOOR ADDITIONS

206.1 In an RF zone district, the following provisions shall apply:

- (a) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;
- (b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and
- (c) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph, the following quoted phrases shall have the associated meanings:
 - (1) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and
 - (2) “Existing solar energy system” shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:
 - (A) Legally permitted, installed, and operating; or
 - (B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system.

206.2

In an RF zone district, relief from the design requirements of Subtitle E § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, subject to the conditions of Subtitle E § 5203.3.

Title 11-U DCMR, USE PERMISSIONS, is amended as follows:

Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, is amended as follows:

Subsection 301.2 of § 301, MATTER-OF-RIGHT USES (RF), is amended to read as follows:

- 301.2 Conversion of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF-1, RF-2, or RF-3 zone subject to the following conditions:
- (a) The building or structure to be converted is in existence on the property at the time of filing an application for a building permit;
 - (b) The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);
 - (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;
 - (d) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;
 - (e) A roof top architectural element original to the structure such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;
 - (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;
 - (g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph the following quoted phrases shall have the associated meaning:

- (1) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and
- (2) “Existing solar energy system” shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:
 - (A) Legally permitted, installed, and operating; or
 - (B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system; and
- (h) An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and Subtitle U § 320.3.

Section 320, SPECIAL EXCEPTION USES (RF), is amended as follows:

Paragraphs (f) through (h) of § 320.2 are amended to read as follows:

320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:

...¹

- (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

chimney or other external vent must be existing and operative at the date of the building permit application for the addition;

(g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph the following quoted phrases shall have the associated meaning:

(1) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and

(2) “Existing solar energy system” shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:

(A) Legally permitted, installed, and operating; or

(B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system;

(h) A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;

...

The first sentence of § 320.3 is amended to read as follows:

320.3 Conversion of a non-residential building or other structure to an apartment house and not meeting one (1) or more of the requirements of Subtitle U § 301.2, shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by

the Board of Zoning Adjustment under Subtitle X, Chapter 9 subject to the following provisions:

...

On November 17, 2016, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of the public hearing by a vote of **3-0-2** (Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Anthony J. Hood and Peter A. Shapiro, not present, not voting).

On March 27, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not having participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on April 28, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

ZONING COMMISSION ORDER NO. 14-11A

Z.C. Case No. 14-11A

**(Subtitle B, Definitions; Subtitle D, Zones R-2, R-13, R-17, and R-20; Subtitle E, RF Zones;
and Subtitle U, Use Permissions RF Zones)**

March 27, 2017

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.